THE HON'BLE Mr. JUSTICE N.V. RAMANA

WRIT PETITION No.18258 OF 2004

DATE: 07-12-2005

Between:

Vidavalur Masthanaiah, S/o. Subramanyam,
aged about 45 years, Occ: Cultivation,
R/o. Korutur village, Indukurpeta Mandal,
Nellore District & two others

.. Petitioner

AND

The Commissioner, Endowments Department,
Government of Andhra Pradesh, Hyderabad
& two others

.. Respondents

THE HON'BLE Mr. JUSTICE N.V. RAMANA

WRIT PETITION No.18258 OF 2004

ORDER:

This Writ Petition is filed seeking Writ of *Mandamus* declaring the public auction notification, dated 01-10-2004, of the 3rd respondent-Executive Officer, Sri Chendramouleswara Swamy Temple, Potlapudi village, Thotapalligudur

Mandal, Nellore District and conducting public auction on 16-10-2004 for the lands in Survey No.201, admeasuring Acs.2-95 cents; Survey No.208, Ac.1-05 cents; Survey No.208, admeasuring 99 cents; Survey No.209
Ac.1-94 cents; Survey No.238, 85 cents; Survey No.198 Acs.2-00; and in Survey 200/3, 27 cents situated at Korutur village, Indukurpeta Mandal, Nellore District as illegal, arbitrary and without jurisdiction.

The case of the petitioners is that the lands in question belong to Sri Chandramouleswara Swamy Temple situated at Potlapudi village, Thotapalligudur Mandal, Nellore District (for short 'the temple') and a public auction was conducted on
10-06-2003 for the leasehold rights of the said lands by the temple authorities for a period of three years i.e. 2003-04 to 2005-06 and the petitioners are the highest bidders in the said auction and the same was confirmed by the Assistant Commissioner of Endowments Department, Nellore approving the lease in favour of the petitioner for a period of three years. The possession of the said lands was delivered to the petitioners on 10-06-2003 and the petitioners are in possession and enjoyment of the same by paying the rents regularly. While so, the 3rd respondent issued public auction notification, dated 01-10-2004, for conducting public auction for the lands in question on 16-10-2004 at 11-00 a.m. in the temple premises even before completion of the lease period granted to the petitioners without issuing any notice, hence this writ petition.

Respondent No.3 filed counter affidavit denying the allegations made by the petitioners. It is admitted that the lands in question were leased out to the petitioners on payment of annual maktha and the Commissioner of Endowments Departments, Nellore, approved the same and the possession of the lands was also delivered to them.
But as per the terms and conditions of the auction,
the highest bidders have to pay one year maktha in advance and the same was not complied with by the petitioners for the year 2004-05, therefore the impugned notification was issued and the temple authorities have already issued a notice to the petitioners intimating the same.

Heard the learned counsel for the petitioners.

None appeared on behalf of the 3rd respondent. The learned Assistant Government Pleader reiterated the averments made in the counter affidavit.

The learned counsel for the petitioners drew the attention of this Court to the terms and conditions of the auction notice. The relevant conditions of the auction notice are as under:

> *"5. The highest bidder has to pay as per the prevailing paddy rate, Advance Maktha along with the deposit. No interest will be paid for the same.*
>
> *6. The highest bidder has to pay the Maktha paddy every year at the end of April in the place where the Executive Officer says."*

According to the learned counsel for the petitioners the highest bidders have to pay the annual maktha in advance for the first year along with the deposit amount and the second year onwards they have to pay the annual maktha at the end of April at the place where the Executive Officer intends. Therefore, there is no default in payment of annual maktha by the petitioners for the year 2004.

A bare perusal of the terms and conditions of the auction notification supports the contention of the learned counsel for the petitioners. There is no evidence from the side of the 3rd respondent to rebut the said contention. There is no assistance at all from the respondents to disprove the contention of the petitioners. In such view of the matter, there is no other option for this Court except to take the contention of the learned counsel for the petitioners as true and allow the writ petition for non-cooperation of the

3rd respondent and its counsel.

For the aforementioned reasons, the Writ Petition is allowed. No costs.

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N.V. RAMANA, J

Date:07-12-2005.

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